

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600

**Case No. S-1561-B**

**PETITION OF RICHARD A. HEALD, D.D.S.**

OPINION OF THE BOARD

(Public Hearing Date: September 4, 2002)

(Effective Date of Opinion: October 7, 2002)

Case No. S-1561-B is an application for a modification of an existing special exception, to permit the parking lot to be paved with asphalt and to remove the requirement for posting a Right Turn Only sign at the driveway entrance. The Board of Appeals granted Case No. S-1561 to Richard A. Heald on August 17, 1988, pursuant to Section 59-G-2.36 of the Zoning Ordinance, to permit a medical practitioner's office for use of other than a Resident of the Building. In Case No. S-1561-A, the Board granted a modification to permit an addition to the office.

The Board of Appeals held a public hearing on the modification request, pursuant to Section 59-A-4.11 of the Zoning Ordinance. Richard A. Heald appeared on his own behalf. Martin Klauber, People's Counsel also appeared.

The Board received one letter of opposition to the modification request, from Glenn and Linda Kikuchi.

Decision of the Board

Modification **granted**, subject to conditions.

**EVIDENCE PRESENTED**

1. The Board's opinion granting the special exception provides that the driveway will be paved with gravel, and that a No Right Turn sign will be posted at the driveway entrance.
2. Dr. Heald submitted a letter into the record [Exhibit No. 3] and testified at the public hearing that in his initial special exception application, he requested a gravel driveway, because he could not afford to pave the driveway. He stated that he later paved the driveway "because of the mud and dirt my patients (many

of them neighbors) were getting on their shoes and clothes.” He also stated that gravel is difficult for disabled patients to traverse. [Exhibit No. 3].

3. Dr. Heald also submitted into the record a letter from James W. Hendricks, P.E., which states: “It has been my experience that based on the criteria of the Maryland National Capital Park and Planning Commission and the Montgomery County Department of Permitting Services, Water Resources Division, it does not matter if a parking surface is gravel or bituminous paving, the computed runoff will be the same.” [Exhibit No. 8].

4. Dr. Heald stated at the public hearing that the contour of his property has not changed since he paved the driveway. He stated that he believes that runoff problems originate from Hall Court in connection with construction which occurred on Hall Court, and that “the situation existed before I was there.” [Transcript, September 4, 2002, p. 7].

5. Dr. Heald stated in his modification application [Exhibit No. 3], and at the public hearing, that the Right Turn Only Sign “was knocked down several years ago and not replaced.” He further stated that “the vast majority of my patients turn right out of my driveway because that’s the most expedient way home and only those that live in the neighborhood turn left making the right turn sign unnecessary and ineffectual.”

6. Maryland National Capital Park and Planning Commission staff reviewed the modification request and recommend approval. The report states that Transportation staff visited the site. Staff found little traffic on Hall Road, and therefore felt that traffic safety would not be compromised by removal of the Right Turn Only sign. In addition, the report states that transportation and environmental staff do not object to asphalt paving on the driveway, since it is considered impervious. [Exhibit No. 17].

7. Glenn K. and Linda S. Kikuchi sent the Board a letter opposing the modification request. Their letter states that “Since Dr. Heald’s parking lot was paved, we have had persistent problems with excessive amounts of water draining onto our property.” [Exhibit No. 14].

## **FINDINGS OF THE BOARD**

### **GENERAL STANDARDS**

*Sec. 59-G-1.3(c)(4) of the Zoning Ordinance provides:*

*The public hearing must be limited to consideration of the proposed modifications noted in the Board’s notice of public hearing and to (1) discussion of those aspects of the special exception use that are directly related to those*

*proposals, and (2) as limited by paragraph (a) below, the underlying special exception, if the modification proposes an expansion of the total floor area of all structures or buildings by more than 25%, or 7,500 square feet, whichever is less.*

*Sec. 59-G-1.2. Conditions for granting a special exception.*

*59-G-1.2.1. Standard for evaluation. A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.*

The Board finds that neither removal of the Right Turn Only sign and paving the driveway with asphalt have had no significant effects on nearby properties. Therefore there has been no change in either inherent or non-inherent adverse impacts.

*59-G-1.21. General Conditions.*

*(a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

*(1) Is a permissible special exception in the zone.*

The use is so permitted in the R-200 Zone.

*(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

The requested modification does not alter the special exception's compliance with the standards in Section 59-G-2.36.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

The requested modification does not alter the special exception's compliance with the standards in Section 59-G-2.36.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

The Board finds that the requested modification will not increase the intensity of the use, and adopts MNCPPC staff's findings that it will not compromise traffic safety.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The Board finds Mr. Hendricks' letter regarding the pervious quality of asphalt, together with the opinion of MNCPPC environmental staff, persuasive that paving of the driveway does not have a detrimental effect on surrounding properties. The Board finds that removal of the Right Turn Only sign does not affect traffic in the neighborhood, based upon MNCPPC staff's observations of traffic on Hall Road, and upon Dr. Heald's testimony that most patients turn right out of the parking lot.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The requested modification does not change the impact of the special exception in this regard.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendation of a master or sector plan do not alter the nature of an area.*

The requested modification does not change the impact of the special exception in this regard.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

As noted above, the Board finds that there are no adverse safety or environmental impacts from the requested modification. In fact, paving the driveway makes it somewhat safer and easier for visitors to the site to use.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer public roads, storm drainage and other public facilities.*
- (i) *If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.*
- (ii) *With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.*

The requested modification does not change the impact of the special exception in this regard.

- (b) *Nothing in this Article relieves an applicant from complying with all requirements to obtain a building permit or any other authorization or approval required by law, nor does the Board's finding of facts regarding public facilities bind any other governmental agency or department responsible for making a determination relevant to the authorization, approval or licensing of the project.*

The requested modification does not change the compliance of the special exception with these requirements.

- (c) *The applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.*

The requested modification does not change the compliance of the special exception with these requirements.

### SPECIFIC STANDARDS

*Sec. 59-G-2.36. Medical practitioner's office for use of other than a resident of the building.*

- (a) *In all residential zones other than specified in Subsection (b) below, one or more offices of not more than 2 full-time medical practitioners may be permitted, provided that:*

(1) *The exterior of the premises is not changed or altered in appearance;*

The requested modification does not change the compliance of the special exception with this requirement.

(2) *Not less than 50 percent of the floor space of the building is devoted to residential uses;*

The requested modification does not change the compliance of the special exception with this requirement.

(3) *Office space suitable for the practice of the profession is unavailable in either the nearest commercial zone or the nearest medical clinic office building constructed according to a special exception grant;*

The requested modification does not change the compliance of the special exception with these requirements.

(4) *Additional medical specialists are not employed more than an aggregate of 40 hours per week and there are never more than 2 medical professionals, whether general practitioners or medical specialists, in such office on any one day. In consideration of an application for part-time medical specialist, the Board must consider the total number of employees and the total number of patients at any one time;*

The requested modification does not change the compliance of the special exception with these requirements.

(5) *The maximum number of nonprofessional support staff must be determined by the Board taking into account the impact on neighboring residences of the resultant parking and traffic;*

The requested modification does not change the compliance of the special exception with these requirements.

(6) *Such use will not constitute a nuisance because of noise, traffic or physical activity; and*

The Board adopts MNCPPC staff's finding that the Right Turn Only sign can be removed from the special exception property without compromising traffic safety. The Board notes that since most patients turn right out of the driveway anyway, the sign is not necessary.

(7) *Such use will not tend to affect adversely the use and development of neighboring properties and the general neighborhood.*

The Board finds Mr. Hendricks letter and MNCPPC environmental staff's finding regarding the pervious nature of asphalt persuasive that paving the driveway with asphalt does not adversely affect nearby properties. In addition, based upon Dr. Heald's testimony [See Evidence Presented, paragraph 4], the Board finds that runoff problems pre-existed paving of the driveway. -

(b) *In the R-H, R-10, and R-20 and R-30 zones, one or more offices for one or more medical practitioners may be permitted...*

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The subject property is in the R-200 Zone.

Therefore, based upon the foregoing,

On a motion by Louise L. Mayer, seconded by Allison Ishihara Fultz, with Angelo M. Caputo and Donald H. Spence Jr., Chairman in agreement, and Donna L. Barron necessarily absent:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the request to modify special exception to permit removal of the Right Turn Only sign, and asphalt paving of the driveway is **granted**, subject to the following conditions:

1. Petitioner shall be bound by his testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's opinion granting the special exception.

2. All terms and conditions of the original special exception, except as modified herein, remain in full force and effect.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of

Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 7<sup>th</sup> day of October, 2002.

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Katherine Freeman  
Executive Secretary to the Board

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.